



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/167973

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services in regard to Child Care, a hearing was held on September 21, 2015, at Racine, Wisconsin.

The issue for determination is whether Racine County Department of Human Services (the agency) correctly determined the Petitioner was overpaid childcare benefits.

NOTE: The record was held open until the end of the day to allow the Petitioner to submit guardianship papers. They have been marked as Exhibit 3 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. Petitioner is the court appointed guardian of his grandson and has been so since October 16, 2012. (Testimony of Petitioner; Exhibit B)
3. In February 2013, the Petitioner obtained employment in [REDACTED] (Testimony of Petitioner)
4. Petitioner's permanent residence is in Racine, but he stays in [REDACTED] during the work week and returns to Racine on the weekend. (Testimony of Petitioner)
5. His grandson stays in Racine at the Petitioner's home and is cared for by his aunt and uncle while Petitioner is away. The aunt and uncle also live in Petitioner's home. (Testimony of Petitioner)
6. The aunt and uncle pay the Petitioner rent in the amount of \$800 per month. (Testimony of Petitioner; Exhibits G and H)
7. Petitioner is responsible for paying for the child's food and clothing. (Testimony of Petitioner)
8. During the week, the child is in daycare. He is dropped off and picked up by his aunt or uncle. (Testimony of Petitioner)
9. On July 6, 2015, the agency sent the Petitioner a manual Child Care Client Overpayment Notice, advising him that he was overpaid \$4,806.40 in child care benefits from the period of March 3, 2013 to December 31, 2013. (Exhibit K2)
10. On July 7, 2015, the agency sent the Petitioner two automated Child Care Overpayment Notices:
 Claim [REDACTED] in the amount of \$1,410.16 for the period of 03-03-2013 to 04-30-13
 Claim [REDACTED] in the amount of \$3,396.24 for the period of 06-01-13 to 12-31-13
 (Exhibits K and K1)
11. The Petitioner filed a request for fair hearing that was received on August 10, 2015. (Exhibit 1)

DISCUSSION

Regardless of who caused the overpayment, the county agency is legally required to seek recovery of all overpayments of child care benefits. Wis. Stat. § 49.195(3)

An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than is entitled to receive. *Wisconsin Shares Child Care Manual (CCM)* §3.5.1¹

"All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client." *CCM* §3.5.2

Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3) See also CCM, §3.5.2

¹ The Wisconsin Shares Child Care Manual can be viewed on line at:

<http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm#Welcome.htm>

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving recovery of an alleged overpayment, the agency is the moving party, seeking to change the status quo. As such, the agency bears the burden to prove that it acted correctly.

Here, the agency asserts that the Petitioner was not entitled to receive child care benefits for his then 2-3 year old grandson, for the period of March 3, 2013 to April 30, 2013 and from June 1, 2013 to December 31, 2013. The agency believes the Petitioner and the grandson were not living at the same residence in Racine and therefore, not part of the same assistance group.

It is clear that this case is something of an outlier.

Petitioner testified credibly, that he owns the home in which the child lives, that he considers that home his permanent residence and that he stays in [REDACTED] only when he is working, about 4-5 days a week.

The question then, is what is Petitioner's assistance group? The Wisconsin Shares Child Care Manual provides the following guidance:

1.4.1 Assistance Groups (AG)

Assistance Groups consist of any of the following individuals who reside in the same household:

- An individual who is a parent caring for a child
- The individual's dependent children
- Any dependent children of the individual's dependent children
- The individual's spouse or any non-marital co-parent
- The spouse's dependent children
- The non-marital co-parent's dependent children

When paternity has been established for a child in the child care Assistance Group, the father is presumed to continue residing in the household, unless a child support referral has been made. Likewise, any parent is presumed to continue to reside in the household unless a child support referral has been made.

If an adult, biological, adoptive, or custodial parent of a child is living in the household, the child care Assistance Group must not include another adult who resides in the same household unless s/he is the spouse of the custodial parent, paternity has been established between the other adult and the child, or the other adult has guardianship of both the child and the biological, adoptive, or custodial parent.

CCM, §1.2 defines "dependent child" as, "person who resides with a parent and who is under the age of 18 or, if the person is a full time student at a secondary school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19, is under the age of 19".

CCM, §1.2 also defines "parent": "Notwithstanding Wisconsin Statute s. 49.141(1)(j), 'parent' means a custodial parent, placement parent, foster parent, legal custodian, or person acting in place of a parent. For purposes of the Wisconsin Shares Child Care Subsidy Program and this manual, this definition also includes relative caretakers of children who do not have a court order."

In addition, CCM, §1.2 defines "residence" as, "The address of the physical dwelling where a family lives."

Because the Petitioner has legal guardianship of the child, he is a parent for the purposes of the Wisconsin Shares program and his grandson is his dependent child, as they both live in the same permanent residence. Petitioner is only away temporarily from the residence for work. Thus, the Petitioner and his grandson make up the assistance group, for child care purposes.

Based upon the foregoing, it is found that the agency did not prove, at least at this time, that an overpayment of child care benefits occurred as they describe. This is not to say that there isn't something amiss about the public benefits (FoodShare) received by the individuals living in that home. Something is definitely not right, but there just isn't enough information in this record to determine what, exactly, is off.

I note for the record that the alleged overpayment period is for March – April and for June – December 2013. It is unclear from the record how the agency came up with that overpayment period, in particular, why May 2013 was not included, since the issue giving rise to the overpayment had to do with where Petitioner's residence was.

I also note for the record that the agency did not include any case comments, Six Month Report Forms or renewals from 2013, establishing what the Petitioner did and did not report to the agency regarding his living arrangements and income.

CONCLUSIONS OF LAW

The agency has not met its burden to prove the Petitioner was overpaid child care benefits.

THEREFORE, it is

ORDERED

The agency shall rescind overpayment claim number [REDACTED], in the amount of \$1,410.16 for the period of 03-03-2013 to 04-30-13 and overpayment claim number [REDACTED], in the amount of \$3,396.24 for the period of 06-01-13 to 12-31-13. The agency shall take all administrative steps to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

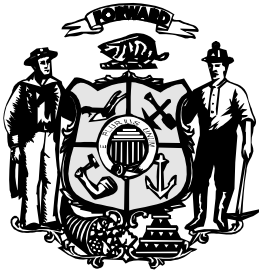
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on

those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of November, 2015

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 24, 2015.

Racine County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud